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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12
13 In re
14 MI PUEBLO SAN JOSE, INC.,
15 Debtor.

Case No. 13-53893
Chapter 11

16 OBJECTION BY PACIFIC MEAT
17 COMPANY TO INTERIM MOTION
18 BY DEBTOR TO APPROVE USE OF
19 CASH COLLATERAL AND
20 REQUEST FOR SETTING OF
21 INTERIM AND FINAL HEARINGS
22 THEREON

Date: August 28, 2013
Time: 10:30 a.m.
Place: Courtroom 3020
280 South 1st Street
San Jose, California

23
24 Creditor Gaukel Enterprises, Inc. d/b/a Pacific Meat Company ("Pacific
25 Meat") hereby objects to the Interim Motion by Debtor to Approve Use of Cash
26 Collateral and Request for Setting of Interim and Final Hearings Thereon ("Motion")
27 of Debtor Mi Pueblo San Jose, Inc. ("Debtor" or "Mi Pueblo"), as follows:

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OBJECTION BY PACIFIC MEAT COMPANY TO INTERIM MOTION BY DEBTOR TO APPROVE USE OF
CASH COLLATERAL AND REQUEST FOR SETTING OF INTERIM AND FINAL HEARINGS THEREON

1 Procedural Background. The Debtor filed for protection under the
2 Bankruptcy Code on July 22, 2013 and filed the Motion (Docket #11), along with
3 other so-called First Day Motions, on the same date. Among other things, the
4 Motion requests that the Debtor be permitted to use cash collateral in which Wells
5 Fargo Bank, N.A. ("WFB" or the "Bank") claims a security interest, under certain
6 terms.

7 An interim hearing was held on August 25, 2013 and an Interim Order
8 on the Motion was entered on July 26, 2013 (Docket #46). Among other things,
9 the Interim Order: (i) allowed the Debtor to use the Bank's cash collateral as set
10 forth in the Budget attached as Exhibit 1 to the Interim Order (the "Budget," Docket
11 #46-1); and (ii) provided adequate protection to the Bank through a variety of
12 methods, including payment of Adequate Protection Payments and the granting of
13 a non-avoidable perfected replacement lien in the Bank's collateral and "an
14 administrative expense claim under 11 U.S.C. §§ 503(b) and 507(a)(1) with a
15 super priority status pursuant to 11 U.S.C. § 507(b) to the extent that the Bank is
16 not adequately protected with respect to Mi Pueblo's use of Cash Collateral."
17 (Interim Order, p.5, ¶¶ 3(c), 4, and 6.) A final hearing was scheduled for August
18 21, 2013.

19 Non-payment of 503(b)(9) Administrative Claims in Contravention of Interim
20 Order and Budget. The Budget provides that 503(b)(9) claims will be paid over the
21 course of three weeks, as follows:

Period & Week	Pd 8 W2	Pd 8 W3	Pd 8 W4	Pd 9 W1
Week Ending	Sun, 7/28/13	8/4/2013	8/11/2013	8/18/2013 . . .
. . .				
503 (b) 9		3,500,000	2,500,000	2,500,000

25 (See Budget, line item titled 503 (b) 9.)

26 The continued viability of the Debtor is dependent upon payment of

1 503(b)(9) claims because the Debtor needs particularized merchandise for its
2 customers, much of which is provided by small businesses like Pacific Meat and
3 not readily replaceable. These suppliers must be paid so they are able and willing
4 to continue to supply the Debtor with the products the Debtor needs to successfully
5 maintain its customer base.

6 No objection had been made to the Motion previously since creditors like
7 Pacific Meat, a supplier to the Debtor of meat, chicken and related products, had
8 been lead to believe that suppliers with administrative claims under 11 U.S.C.
9 §503(b)(9) would be paid promptly,¹ so that the Debtor would be able to keep its
10 doors open and continue to provide its customers with the products they want. The
11 Motion itself stated that “Mi Pueblo proposes to expend cash collateral to pay
12 essential operating expenses and claims in the minimum amount necessary to
13 prevent irreparable harm to its business and operations. . . . These expenditures
14 take into account . . . Section 503(b)(9) reclamation [sic] claims treated under Mi
15 Pueblo’s other First Day Motions.” (Motion, p. 8, ¶ 14.) The Budget attached to
16 the Interim Order *reflects payments of \$8.5 million of 503(b)(9) claims by August*
17 *18*. The Bank, in addition to helping create the Budget, reiterated this sentiment at
18 the hearing on July 25, when its counsel stated that the Bank was working with the
19 Debtor to make sure that the stores would not close.

20 Creditors Were Mislead by the Bank. Pacific Meat and the other supplier
21 creditors holding 503(b)(9) administrative claims, however, were misled. Although
22 the Debtor has properly submitted claims for review by the Bank under the
23 Procedures Order, *not one has been paid*. The Bank has objected to the payment

24 ¹ After a review by the Bank as set forth in the other orders covering the First Day Motions, including the
25 Order (i) Granting Administrative Expense Status to Debtor’s Undisputed Obligations to Vendors Arising
26 from Post-petition Delivery of Goods Ordered Pre-petition and Authorizing Debtor to Pay Such Obligations
27 in the Ordinary Course of Business; (ii) Authorizing Payment for Goods Received Within Twenty Days of
28 Filing and Establishing Administrative Claims Bar Date for Section 503(b)(9) Claims; and (iii) Establishing
Procedures and to Allow Claims of Perishable Agricultural Commodities Act and Packers and Stockyard Act
Claimants (the “Procedures Order”), which allowed the Bank three days to review 503(b)(9) claims before
allowing them for payment.

1 of the claims which have been submitted by the Debtor, stating that “the Bank will
2 consent to the payment of [Section 503(b)(9) claims] upon the earlier of the
3 effective Plan of Reorganization confirmed by Mi Pueblo or at such time as the
4 outstanding obligations owed by Mi Pueblo to the Bank, including all unpaid
5 principal, interest, attorneys’ fees and out of pocket costs, are paid in full.” (Bank’s
6 Response to Debtor’s request for payment of administrative expense claim, August
7 6, 2013.) Payment of specific claims may be an issue for another day, but the
8 Bank’s refusal to pay 503(b)(9) claims *until it is paid in full or a plan is confirmed* is
9 wholly contrary to the expectations set by the Motion, the Bank’s statements
10 through its counsel at the interim hearing on the Motion, and the Budget approved
11 by the Bank attached to the Interim Order, on which creditors were entitled to rely.
12 Now that Pacific Meat and other creditors see that the true intention of WFB is *not*
13 to pay Mi Pueblo’s suppliers promptly, to the detriment of the Debtor as well as the
14 suppliers,² Pacific Meat objects to the Motion.

15 At the hearing scheduled for August 21, 2013, the court and creditors were
16 advised that the Debtor and the Bank requested an additional week to try to
17 resolve issues between them regarding a final Cash Collateral Order. The Budget,
18 was retained in full, including the line item showing payments of 503(b)(9) claims.
19 The Bank continues to refuse to pay any of those claims. Any further Cash
20 Collateral Order must address the payment of these claims.

21 A Superpriority Lien Should Not Be Granted. The request for a superpriority
22 lien in the Motion also shows the overreaching of the Bank. In addition to the
23 misrepresentations to the creditors as stated above, the Bank has demanded a
24 superpriority lien over and above monthly adequate protection payments and a

25 ² Many of the Debtor’s suppliers, including Pacific Meat, are small businesses which cannot easily carry a
26 receivable of hundreds of thousands of dollars. (Pacific Meat’s 503(b)(9) claim is in the amount of
27 \$432,642.60.) Pacific Meat is informed and believes that most creditors are now supplying the Debtor on a
28 C.O.D. basis (whereas before they were on credit terms) and that some have been required to obtain lines
of credit due to the nonpayment by Mi Pueblo. If they are not paid soon, many will likely cease supplying Mi
Pueblo, which does not have alternative suppliers for many of the products it supplies.

1 valid, perfected, non-avoidable replacement lien in its collateral. The demand for a
2 superpriority lien (which Pacific Meat understands was offered by the Debtor in its
3 Motion at the insistence of WFB) has been made notwithstanding the fact that the
4 Bank's loan is secured by all of Mi Pueblo's accounts receivable and rights to
5 payment, inventory and equipment and additional security obtained by WFB from
6 the Debtor and its related entity, Cha-Cha Enterprises, just months prior to the
7 bankruptcy filing. According to the Motion, "notwithstanding Mi Pueblo's use of the
8 proceeds collected, . . . the remaining security will exceed the balance owed [to the
9 Bank] by more than 200%." (Memorandum of Points and Authorities in Support of
10 Motion to Approve Use of Cash Collateral, Docket #11-4, p.8.) Given the already
11 secure position of the Bank in a case with *no monetary defaults*, and the Bank's
12 obdurate actions with regard to administrative claims, which could very likely cause
13 this Debtor to lose its suppliers and become administratively insolvent, the
14 superpriority lien is unnecessary and should be denied in this case.

15 Respectfully submitted,

16 Dated: August 23, 2013

17 GREENFIELD SULLIVAN DRAA
& HARRINGTON LLP

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19 By: /s/ Marcia E. Gerston

20 Marcia E. Gerston
21 Attorneys for Creditor
22 Pacific Meat Company
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